

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

New York State Electric & Gas Corporation

Project Nos. 2852-018 and 019

ORDER ON REHEARING AND REQUESTS FOR CLARIFICATION
AND EXTENSIONS OF TIME

(Issued March 30, 2004)

1. On December 24, 2003, pursuant to Section 15(f) of the Federal Power Act (FPA),¹ the Commission issued a nonpower license² to New York State Electric & Gas Corporation (NYSEG or licensee) for the 2-megawatt (MW) Keuka Hydroelectric Project No. 2852. NYSEG has filed a timely request for rehearing and clarification of certain license articles. We are granting rehearing on some requests, amending and clarifying the nonpower license in certain respects, and denying rehearing on the remaining issues. We are also granting in part NYSEG's request filed March 2, 2004, for extensions of certain deadlines in the license articles.

BACKGROUND

2. The Keuka Project is located on Mud Creek and Keuka Lake and on Waneta and Lamoka Lakes in Steuben and Schuyler Counties, New York. The project includes the 183-foot-long, 13-foot-high Bradford Dam; a reservoir consisting of Waneta and Lamoka Lakes; a 9,288-foot-long power canal; a 3,600-foot-long, 4.5-foot diameter underground concrete penstock; an 835-foot-long, 3.5-foot diameter above-ground steel penstock; and a powerhouse containing a single 2-MW generating unit.

¹16 U.S.C. § 808(f).

²105 FERC ¶ 61,381 (2003).

3. The project straddles two drainage basins. Water drains in a natural southerly direction from Waneta Lake into Lamoka Lake and (in releases from the Bradford Dam) into Mud Creek and the Susquehanna River Basin. Impounding water at Bradford Dam reverses drainage to a northerly direction, from Waneta and Lamoka Lakes through the power canal, penstocks, and powerhouse into Keuka Lake and the Great Lakes Basin.

4. The original license for the project was issued on March 14, 1983, with an expiration date of March 1, 2002.³ In 1998, with the Commission's approval,⁴ NYSEG ceased generating power, because the low availability of water and the cost of maintenance prevented the project from producing power economically. The Commission issued the nonpower license for a term ending when the Commission issues an order finding that NYSEG has fulfilled the requirements of the license or by the end of three years, whichever comes first.⁵

DISCUSSION

A. Soil Erosion Control Plan (Article 401)

5. NYSEG objects to the requirement of Article 401 of the nonpower license for a plan to monitor stream and impoundment erosion. It will no longer operate the project for power generation, and it notes that Article 402 requires it to construct a 4-foot-wide notch in the crest of the Bradford Dam spillway to maintain constant water levels in Waneta and Lamoka Lakes. Consequently, there will soon be no water flowing from the Waneta and Lamoka Lakes into Keuka Lake, and there will be only naturally-occurring impoundment or stream erosion, which NYSEG believes will be minor. NYSEG therefore asks that we delete Article 401.

6. NYSEG's arguments are well taken, and there is indeed little likelihood that erosion will be a concern during the three years or less that the Commission will have the project site under license. We are therefore deleting Article 401, except for its subsection (2), which we discuss next.

³22 FERC ¶ 62,327 (1983).

⁴Order of the Director, Office of Energy Projects, dated September 16, 1998.

⁵See ordering paragraph A of the nonpower license, 105 FERC at 62,693.

7. NYSEG objects to Article 401(2)'s requirement that it assess the "powerhouse land parcel" for potentially hazardous materials and remove any such materials in accordance with Federal and State regulations. NYSEG does not dispute that any such materials should be identified and removed; rather, it asserts that Article 401 does not properly address the hazardous materials issue, and argues that the Commission should leave the matter to the appropriate State and Federal environmental authorities.

8. It was in fact the New York State Department of Environmental Conservation (NYSDEC) which recommended that the license require NYSEG, before it removes the generating equipment and sells the 0.5-acre powerhouse site, which is used as a public picnic area and access point to Keuka Lake,⁶ to assess the powerhouse building for a range of contaminants "associated with [its] prior use" and remove any contaminants found.⁷ For the three years or less that the Keuka Project remains under Commission jurisdiction, we think it appropriate for the license to require the measures at issue. We also agree with NYSDEC that the powerhouse is the proper focus of the hazardous materials plan, and we are revising Article 401 accordingly.

B. Control of Surface Elevations of Waneta and Lamoka Lakes (Article 402(1))

9. Article 402(1) requires NYSEG to construct a 4-foot-wide notch in the crest of the Bradford Dam spillway; install removable stop logs in the notch; and ensure that "the spillway gates are opened and stop logs are removed when surface elevations of Waneta and Lamoka Lakes reach elevation of 1099.2 feet NGVD," and that the spillway gates are closed and stop logs are replaced when surface elevations are "at elevation 1099.05 NGVD."

10. NYSEG points out that simply opening the spillway gates to lower the impoundment will in most cases be sufficient to maintain the lake levels within the required elevation range without also removing the stop logs. It therefore asks that Article 402(1) be revised to give it discretion to use either or both measures to maintain the lake-level range. NYSEG's request is reasonable, and we will modify Article 402(1) accordingly.

⁶See the Environmental Assessment (EA) at p. 8.

⁷See NYSDEC's February 6, 2002 filing at 2; see also the EA at p. 20.

C. Power Canal Open Exit Plan (Article 404)

11. License Article 404 requires NYSEG to file a plan to ensure that the mouth of the power canal remains open for the exchange of water between the canal and Waneta Lake. The object is to maintain water quality in the canal, which is used by recreational boaters. The plan calls for “measures to remove and properly dispose of sediments that may form a natural barrier at the mouth of the power canal.” The licensee must also keep open the “Wayne Gates,” located in the canal about 1,800 feet upstream from its mouth.

12. NYSEG requests that we delete Article 404, on the basis that the article, particularly its requirement for sediment removal, is a new requirement that the Environmental Assessment (EA) in this proceeding did not address. NYSEG argues further that the environmental and recreational benefits of the sediment removal plan are minimal and do not justify the requirements of Article 404. It states that even without the accretion of sediments at their junction, the exchange of water between the canal and the lake is intermittent (when run-off raises the water levels sufficiently), and that the canal, which is shallow and less than a few thousand feet long, does not represent a significant recreational resource. It adds that the article is at odds with the agreement among the agencies and other parties with which NYSEG worked in developing its application under the Commission’s Alternative Licensing Process⁸ that the power canal should remain as is and “would naturally transform more into a natural wetland area in the future.”⁹

13. The EA analyzed NYSEG’s proposal for the canal, but found that with revised flows and over time, re-suspension of fine materials could cause sediments to accumulate in the Waneta Lake outlet at the mouth of the canal, leading to decreased flow into the canal and eventual stagnation.¹⁰ The EA therefore recommended the installation of a

⁸18 CFR 4.34(i) (2003). The Alternative Licensing Process is a collaborative process in which the potential applicant works with state and federal agencies, affected Indian tribes, and other stakeholders in developing its application. Here, participants in the collaborative effort included, among others, NYSEG, NYSDEC, the U.S. Fish and Wildlife Service, New York Rivers United, and the Towns of Wayne and Tyrone, New York.

⁹Rehearing request at 5.

¹⁰EA at p. 22.

flushing valve at the far end of the power canal to flush stagnant water from the canal into Keuka Lake.¹¹

14. In a May 7, 2003 telephone conference discussing comments on the EA,¹² the participants agreed that the flushing valve was not needed to eliminate stagnant water, since there will be an exchange of water between the canal and Waneta and Lamoka Lakes. NYSDEC's position was that the Wayne Gates should be kept open, for recreational use of the canal and to provide fish and wildlife habitat.

15. The key to sustaining the water quality in the canal is to keep the canal mouth clear of sediment and debris that would diminish the exchange of water between the canal and Waneta Lake. However, we do not think it necessary to require NYSEG to file a formal sediment-removal plan for purposes of the remainder of the nonpower license term. We will therefore revise Article 404 of the license to simply require NYSEG to keep the canal mouth clear for the purposes specified herein.

16. Since NYSEG's actions to keep the mouth of the canal clear could affect cultural resources that may be present in the canal area, we are modifying Article 404 to require NYSEG to consult with the New York State Historic Preservation Office before conducting any clearing activities.

D. Clarification of Bradford Dam Gate Operating Plan (Article 403)

17. Article 403 requires NYSEG to file a plan for operating the Bradford Dam gate so as to control surface elevations of Waneta and Lamoka Lakes, as required by Article 402. NYSEG is to specify water-level operating periods, by month and day, for the commencement and cessation of the seasonal water-elevation regime periods identified in Article 402.

¹¹Id. at p. 40.

¹²See Memorandum summarizing the telephone conference, filed December 5, 2003. Participants in the telephone conference were representatives from the Commission, NYSDEC, NYSEG, U.S. Fish and Wildlife Service, Rochester Gas & Electric, New York Rivers United, Waneta Lake Association, and the Lamoka Lake Association.

18. NYSEG points out that it cannot maintain the water levels required by Article 402 until it notches the dam and installs stop logs. It therefore asks whether Article 403 is intended to require an interim water-level management program until Article 402 is implemented.

19. Our intent in including Article 403 was simply to have NYSEG to specify the time periods for maintaining the lake levels detailed in Article 402; we did not intend to require an interim water level management plan. Therefore, Article 403 applies only to water levels after the dam has been notched.

E. Request for Extensions of License Article Deadlines

20. On March 2, 2004, NYSEG filed a request to extend until October 29, 2004 -- ten months from issuance of the nonpower license -- the deadlines for filing plans in: Articles 401 and 402 (due six months from license issuance); Article 403 (due 60 days from license issuance); and Articles 404 and 501 (due 90 days from license issuance).¹³ NYSEG argues that it cannot meet the deadlines until it obtains the Commission's decision on its rehearing request with respect to these articles.

21. We conclude that the license articles in question, particularly as they are being modified in this order, will not require the full extension NYSEG seeks. We expect that NYSEG can prepare and file the materials by six months from the license issuance date, and we will grant extensions to that date.

The Commission orders:

(A) New York State Electric & Gas Corporation's January 23, 2004 request for rehearing and clarification of the nonpower license issued on December 24, 2003, for Project No. 2852 is granted as set forth below, and in all other respects is denied.

(B) Article 401 is amended to read as follows.

Article 401. Hazardous Materials Plan. Within 6 months from the issuance of this license, the licensee shall file for Commission approval, after consultation with the New York State Department of Environmental

¹³Article 501 (105 FERC at 62,696-97) requires NYSEG to file a description and schedule for compliance with the requirements of its nonpower license.

Conservation, an assessment of the powerhouse for potentially hazardous materials, such as asbestos. Any such materials shall be removed and disposed of in accordance with Federal and State regulations.

The plan shall include documentation of agency consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agency, and specific descriptions of how the agency's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agency to comment before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

(C) Article 402, second paragraph, is amended to read as follows:

(1) construct a 4-foot-wide notch in the Bradford Dam spillway at crest elevation 1,098.5 feet National Geodetic Vertical Datum (NGVD) and include the installation of removable stop logs in the notch. The licensee shall ensure that the spillway gates are opened and/or stop logs are removed when surface elevations of Waneta and Lamoka Lakes reach elevation 1099.2 feet NGVD, and close the spillway gates and/or replace stop logs at elevation 1099.05 NGVD; and

(D) The deadlines for complying with Articles 403, 404, and 501 are each extended to six months following the issuance of the license.

(E) Article 404 is amended to read as follows:

Article 404. Power Canal/Waneta Lake Exchange of Water. To protect the power canal's fish and wildlife resources and to benefit the canal's water quality and recreational use (including boating access to the canal), the licensee shall ensure that the power canal remains open for the exchange of water between the canal and Waneta Lake by (a) keeping open the Wayne Gates, located about 1,800 feet upstream from the mouth of the power canal, and (b) keeping clear the opening between the canal and Waneta Lake. Before undertaking any work to keep the opening clear, the licensee

shall consult with the New York State Historic Preservation Office as to reasonable requirements to protect cultural resources.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.